



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 2, 1998

Ms. Hala L. Carey  
Vial, Hamilton, Koch & Knox, L.L.P.  
1717 Main Street, Suite 4400  
Dallas, Texas 75201-7388

OR98-0005

Dear Ms. Carey:

On behalf of the City of Cockrell Hill (the "city"), you ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111217.

The city received a request for various categories of documents, some of which have already been the subject of a previous open records letter ruling.<sup>1</sup> The city asserts that it does not have responsive documents to some of the requested items, but it has provided the requestor some of the remaining documents. You assert that Exhibit 2 is excepted from required public disclosure based on section 552.108(b)(2).

Section 552.108(b)(2) of the Government Code reads as follows:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

You claim that the requested documents within Exhibit 2 are internal law enforcement records which relate to an investigation that did not result in either an indictment or

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<sup>1</sup>This office ruled In Open Records Letter No. 97-1975 (1997) that exhibits 3 through 5 are excepted from disclosure pursuant to section 552.108 of the Government Code. Thus the city may withhold exhibits 3, 4, and 5 in accordance with Open Records Letter No. 97-1975 (1997).

information against the requestor. You assert that the information should be excepted from disclosure under section 552.108(b)(2). However, where no criminal investigation or prosecution results from a police department's internal investigation of a police officer for alleged misconduct, section 552.108 is inapplicable to the internal investigation documents. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. Civ. App.--El Paso 1992, writ denied); Open Records Decision No. 350 (1982). Here, the police department's internal investigation did not result in a criminal investigation or prosecution. Thus, we conclude that the requested documents are not excepted from disclosure under section 552.108(b)(2) of the Government Code.

The file includes information that appears to have been generated by the Texas Crime Information Center ("TCIC") or the National Crime Information Center ("NCIC"). Title 28, Part 20 of the Code of Federal Regulations governs the release of criminal history information which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to criminal history information it generates. *Id.* Section 411.083 of the Government Code deems confidential criminal history records that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See also* Gov't Code § 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain criminal history record information; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose *Id.* § 411.089(b)(1). Other entities specified in Chapter 411 of the Government are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release the information except as provided by Chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any criminal history record information generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any criminal history record information obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F.

The Seventy-fifth Legislature added section 552.130 to the Open Records Act which governs the release and use of information obtained from motor vehicle records. Section 552.130 provides in relevant part as follows:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]

See Act of May 29, 1997, S.B. 1069, § 4, 75th Leg., R.S. (to be codified at Gov't Code § 552.130). After reviewing the documents, we conclude that you must withhold the driver's license numbers found within the documents pursuant to section 552.130.

Included among the documents you seek to withhold is an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. See Transp. Code § 550.064 (officer's accident report).

The Seventy-fifth Legislature, repealed, codified, and amended V.T.C.S. article 6701d, concerning the disclosure of accident report information. Act of May 29, 1997, S.B. 1069, §13, 75th Leg., R.S. (to be codified at Transp. Code § 550.065). However, a Travis County district court has issued a temporary injunction enjoining the enforcement of section 13 of S.B. 1069 for ninety days. *Texas Daily Newspaper Assoc'n, v. Morales*, No. 97-08930 (345th Dist. Ct., Travis County, Tex., Aug. 29, 1997) (order granting temporary injunction). A temporary injunction preserves the status quo until the final hearing of a case on its merits. *Janus Films, Inc. v. City of Fort Worth*, 163 Tex. 616, 617, 358 S.W.2d 589 (1962). The Supreme Court has defined the status quo as "the last, actual peaceable, non-contested status that preceded the pending controversy." *Texas v. Southwestern Bell Tel. Co.* 526 S.W.2d 526, 528 (Tex. 1975). The status quo of accident report information prior to the enactment of S.B. 1069 is governed by section 47 of article 6701d, V.T.C.S.<sup>2</sup>

Section 47(b)(1) provides that:

The Department or a law enforcement agency employing a peace officer who made an accident report *is required to release a copy of the report* on request to:

....

(D) a person who provides the Department or the law enforcement agency with two or more of the following:

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<sup>2</sup>Although the Seventy-fourth Legislature repealed and codified article 6701d as part of the Transportation Code, the legislature did not intend a substantive change of the law but merely a recodification of existing law. Act of May 1, 1995, 74th Leg., R.S., ch. 165, §§ 24, 25 1995 Tex. Sess. Law Serv. 1025, 1870-71. Furthermore, the Seventy-fourth Legislature, without reference to the repeal and codification of V.T.C.S. article 6701d, amended section 47 of article 6701d, V.T.C.S., relating to the disclosure of accident reports. Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Sess. Law Serv. 4413, 4414. Because the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code, the amendment is preserved and given effect as part of the code provision. Gov't Code § 311.031(c). Thus, the amendment of section 47 of article 6701d, V.T.C.S. is the existing law regarding the availability of accident report information, and may be found following section 550.065 of the Transportation Code. See also Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Sess. Law Serv. 4413, 4414.

- (i) the date of the accident;
- (ii) the name of any person involved in the accident; or
- (iii) the specific location of the accident

V.T.C.S. art. 6701d, § 47(b)(1) (emphasis added). Under this provision, a law enforcement agency "is required to release" a copy of an accident report to a person who provides the law enforcement agency with two or more pieces of information specified by the statute. *Id.* In the situation at hand, the requestor has provided the city with pertinent information. Thus, you are required to release this information under section 47(b)(1)(D) of article 6701d, V.T.C.S.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros  
Assistant Attorney General  
Open Records Division

JIM/glg

Ref.: ID# 111217

Enclosures: Marked documents

cc: Mr. Wallace W. Brown  
3310 Wilmington Drive  
Grand Prairie, Texas 75052  
(w/o enclosures)